

## Official Title and Summary

Prepared by the Attorney General

### PUBLIC SCHOOL TEACHERS. WAITING PERIOD FOR PERMANENT STATUS. DISMISSAL. INITIATIVE STATUTE.

- Increases length of time required before a teacher may become a permanent employee from two complete consecutive school years to five complete consecutive school years.
- Measure applies to teachers whose probationary period commenced during or after the 2003–2004 fiscal year.
- Modifies the process by which school boards can dismiss a permanent teaching employee who receives two consecutive unsatisfactory performance evaluations.

### SUMMARY OF LEGISLATIVE ANALYST’S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- Unknown net effect on school districts’ costs for teacher compensation, performance evaluations, and other activities. The impact would vary significantly by district and depend largely on future personnel actions by individual school districts.

### ANALYSIS BY THE LEGISLATIVE ANALYST

#### BACKGROUND

Most of the employees of K–12 school districts are referred to as “certificated” employees. These consist mainly of teachers but also include instructional specialists, counselors, and librarians.

All of these employees must have some type of license (or certificate) prior to being employed by a district to show basic qualifications in their job area.

***Job Status of Certificated Employees.*** Under current state law, certificated employees serve a *probationary* period during their first two years of service

LENGTH OF STATES’ PROBATIONARY PERIOD FOR K–12 TEACHERS						
ONE YEAR	TWO YEARS	THREE YEARS			FOUR YEARS	FIVE YEARS
Connecticut North Dakota South Carolina	<b>California</b> Illinois Maine Maryland Mississippi Nevada New Hampshire Vermont Washington	Alaska Alabama Arizona Arkansas Colorado Delaware Florida Georgia Hawaii Idaho Iowa	Kansas Louisiana Massachusetts Minnesota Montana Nebraska New Jersey New Mexico New York Ohio Oklahoma	Oregon Pennsylvania Rhode Island South Dakota Tennessee Texas Utah Virginia West Virginia Wisconsin Wyoming	Kentucky Michigan North Carolina	Indiana Missouri

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)**

with a school district. During the probationary period, state law currently requires certificated employees to be evaluated at least once a year. At the end of the employees' first or second year, school districts may choose not to rehire them without offering specific reasons. If not rehired, probationary employees do not have the right to challenge the decision. At the start of their third year, certificated employees are considered *permanent* (or tenured). (See the nearby boxes for some additional information related to California's probationary policies for certificated employees, primarily teachers.)

***Dismissal Process for Permanent Employees.***

Under current state law, permanent certificated employees may be dismissed for unsatisfactory performance as well as a variety of other reasons (such as dishonesty and unprofessional conduct). Most permanent employees must be evaluated at least once every two years. If, however, they receive an unsatisfactory evaluation, they must be assessed annually until they achieve a satisfactory evaluation or are dismissed. Regardless of the reason for a dismissal, the dismissal process (also set forth in state law) consists of about a dozen stages. The process begins with a school district specifying reasons for dismissal and providing a 30-day notice of its intent to dismiss. If requested by the employee, the process includes a formal administrative hearing and the right to appeal to a Superior Court and then a Court of Appeal. Before being dismissed for unsatisfactory performance, the school district must first provide

employees a 90-day period to allow them an opportunity to improve their performance.

**PROPOSAL**

Proposition 74 would change existing state law in the following ways.

***Extends Probationary Period to Five Years.***

The proposition extends from two to five years the probationary period for new certificated employees.

***Modifies Dismissal Process for Permanent Employees.***

The proposition states that two consecutive unsatisfactory performance evaluations constitute unsatisfactory performance for the purposes of dismissing permanent employees. In these cases, the school board would have the discretion to dismiss the employee and the board would *not* have to:

- Provide the 90-day period currently given to permanent employees to allow them to improve their performance.
- Provide as much initial documentation identifying specific instances of unsatisfactory performance (beyond that included in the evaluations themselves).

The effect of these changes would be to reduce requirements in the initial stages of the dismissal process and potentially place greater focus on the evaluation process. Although these changes would apply to all certificated employees, their primary effect would be on teachers.

## ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)

### BRIEF HISTORY OF CALIFORNIA'S PROBATIONARY POLICIES

From 1927 to 1982, California had a three-year probationary period. Over this time, probationary employees typically had at least limited legal rights to challenge dismissal decisions.

The most recent major change to the state's probationary policies occurred in 1983 when the probationary period was shortened from three to two years. In addition, certain legal protections then afforded to probationary employees were removed. These policies remain in effect today.

- Given the longer probationary period, districts could dismiss more teachers during their first five years. This could result in salary savings by replacing higher salaried teachers toward the end of their probationary period with lower salaried teachers just beginning their probationary period.
- Similarly, due to the proposition's modifications to the dismissal process, school districts might experience greater turnover among permanent teachers. This too would result in teacher-related savings from replacing higher salaried veteran teachers with lower salaried, less experienced teachers.

In contrast, districts would experience *increased* teacher costs in the following instances:

- The supply of teachers could be reduced because the longer probationary period and modified dismissal process might be perceived as increasing job insecurity. This would have the effect of putting upward pressure on teacher compensation costs.
- The longer probationary period could lead districts to retain some struggling new teachers beyond the current two-year period to give them additional chances to succeed. By retaining these teachers—instead of replacing them with lower-cost entry level teachers—this would have the effect of increasing teacher salary costs above what they otherwise would have been.

As noted above, the net impact on a school district could vary significantly, depending on such factors as the local labor market, the perceived desirability of working in the district, and district actions in response to the measure.

### FISCAL EFFECTS

The proposition would affect costs relating to teacher compensation, performance evaluations, and other activities.

#### EFFECT ON TEACHER COMPENSATION COSTS

The proposition would affect school district teacher costs in a variety of ways. The net impact would depend on future district actions, and these effects would vary significantly by district. For example, districts would experience *reduced* teacher costs in the following cases:

**ANALYSIS BY THE LEGISLATIVE ANALYST (CONTINUED)****EFFECT ON EVALUATION COSTS**

The proposition would increase teacher performance evaluation costs. Under current law, employees must receive at least three evaluations over their first five years. Under the proposition, they would need to receive five evaluations over this same period. That is, districts would need to conduct up to two additional evaluations for probationary employees. In addition, given the higher stakes involved with unsatisfactory evaluations, school districts might spend more time documenting these assessments.

These costs would also vary significantly from district to district. The costs could range from minor (for districts meeting these additional tasks with existing administrative staff) to more significant (for those adding additional staff to meet these responsibilities). Depending on how districts respond, the statewide costs could range from relatively minor to the low tens of millions of dollars annually.

**OTHER FISCAL IMPACTS**

The measure would have other potential impacts on the state and school districts.

**Administrative and Legal Costs.** The proposition's effect on school district administrative and legal costs is unknown. On the one hand, the

proposition simplifies the dismissal process by requiring slightly less documentation and eliminating the special 90-day notice required for dismissals due to unsatisfactory performance. This would likely result in some administrative savings. On the other hand, given the somewhat simplified dismissal process, teacher dismissals might become more frequent. As a result, the number of teacher requests for administrative hearings and appeals, and their associated costs, could increase.

**Bargaining Costs.** Collective bargaining costs could increase as a result of the proposition. Evaluation procedures are subject to collective bargaining and are commonly found in teacher contracts. To the extent the evaluation process became higher stakes, related negotiations might take longer and be more costly. These costs would be associated with revising the evaluation process, refining evaluation standards, and/or defining unsatisfactory performance. The state would pay any additional costs, as it currently reimburses local school districts for their collective bargaining expenses.

**Recruitment and Training.** To the extent that districts have more or less teacher turnover as a result of this measure, their recruitment and training costs would be affected accordingly.

## Argument in Favor of Proposition 74

PROPOSITION 74 IS ONE OF THE BIPARTISAN REFORMS WE NEED TO GET CALIFORNIA BACK ON TRACK!

*Prop. 74 is Real Education Reform*

California schools used to be among the best in the nation.

Unfortunately, we've gotten off track *despite the fact that public school spending increased by \$3 billion this year and represents almost 50% of our overall state budget.*

Instead of just throwing more of our hard-earned tax dollars at the problem, we need to *get more money into the classroom and reward high-quality teachers* instead of wasting money on problem teachers.

Unfortunately, California is one of a handful of states with an outdated "tenure" law that makes it almost impossible and extremely expensive to replace poor-performing teachers.

*According to the California Journal (05-01-99), one school district spent more than \$100,000 in legal fees and ultimately paid a teacher \$25,000 to resign. Another district spent eight years and more than \$300,000 to dismiss an unfit teacher.*

*Fighting the rules, regulations, and bureaucracy that protects unfit teachers squanders money that should be going to the classroom!*

*Today, even problem teachers are virtually guaranteed "employment for life."*

*Prop. 74 Is About Making Sure Our Students Have the Best Possible Teachers:*

- Requires teachers to perform well for five years instead of just two before they become eligible for permanent "guaranteed" employment.
- With a five-year waiting period, teachers have more opportunity to demonstrate expertise and that they deserve tenure. Principals have more time to evaluate teachers.

- Makes it easier to remove a tenured teacher after two consecutive unsatisfactory evaluations.
- Improves the quality of our teachers by rewarding the best teachers and weeding out problem teachers.  
*Unfortunately, Opponents of Prop. 74 Don't Want Reform:*
- Union bosses have blocked many education reforms and just want voters to throw more tax money at education with no reform!
- They will stop at nothing to defeat Prop. 74 and have spent millions for television ads to confuse voters on the reforms we need to get California back on track.  
*Don't Be Mislead by Their Deceitful Tactics. Classroom Teachers Say "YES" on Prop. 74:*

*"I've been an elementary teacher for 17 years. Good teachers don't need a guaranteed job for life. I want to be re-hired and promoted based on the job I do, not just how long I've been on the job. Yes on Prop. 74 will improve the quality of teachers and the quality of our schools."*

Susan Barkdoll, San Bernardino  
City Unified School District

*"Most teachers are hardworking, care about their students, and go the extra mile. Regrettably, some teachers don't. I've known teachers who are an embarrassment to the profession. Our children deserve better. They deserve teachers who will motivate and challenge them to achieve at their highest potential, and principals need the ability to remove non-performing teachers from the classroom."*

Jacqueline Watson, Placentia-Yorba Linda  
Unified School District

*"YES" on Prop. 74—Make Sure Our Students Have the Best Possible Teachers!*

**GOVERNOR ARNOLD SCHWARZENEGGER**

**GEORGE SCHULZ**, Chair

Governor's Council of Economic Advisors

**KARLA JONES**

2004 Educator of the Year, Orange County

## Rebuttal to Argument in Favor of Proposition 74

PROP. 74 IS DESIGNED TO PUNISH HARDWORKING TEACHERS—THAT'S NOT REAL EDUCATION REFORM

PROP. 74 DOES NOTHING TO DEAL WITH THE REAL PROBLEMS IN OUR SCHOOLS: It won't reduce class sizes, buy a textbook for every child, or make our schools clean and safe. Instead, it will discourage recruitment of the quality teachers we so desperately need. California already has a hard time finding and keeping our hardworking teachers.

SUPPORTERS OF 74 MISSTATE THE LAW: Today, teachers don't have a guaranteed job for life. Under current law teachers can be, and are fired. Prop. 74 will force school districts to divert tens of millions of dollars out of the classroom for administrative expenses.

READ PROP. 74. ABSOLUTELY NOTHING IN IT WILL "REWARD HIGH QUALITY TEACHERS." There was a program that evaluated teachers and rewarded high quality teachers with a \$10,000 bonus, but Governor Schwarzenegger cut the funding for it this year.

HOW DID THEY ARRIVE AT 5 YEARS PROBATION INSTEAD OF THE CURRENT TWO? There are no facts to prove that five years means better student performance or more qualified teachers.

Prop. 74 contains no mentoring or evaluation systems or any other support services to assist newer teachers to do their difficult jobs better.

Scapegoating teachers may be politically expedient, but it doesn't constitute the real reform agenda our schools need.

Prop. 74 is "a classic case of a solution in search of a problem." *San Francisco Chronicle*, July 11, 2005.

VOTE NO ON PROP. 74.

**MARY BERGAN**, President  
California Federation of Teachers

**MONICA MASINO**, President  
Student CTA

**MANUEL "MANNY" HERNANDEZ**, Vice President  
Sacramento City Unified School District



## Argument Against Proposition 74

PROPOSITION 74 IS DECEPTIVE, UNNECESSARY, AND UNFAIR. It won't improve student achievement and it won't help reform public education in any meaningful way. Furthermore, it will cost school districts tens of millions of dollars to implement.

Proposition 74 doesn't reduce class size or provide new textbooks, computers, or other urgently needed learning materials. It doesn't improve teacher training or campus safety. Nor does it increase educational funding or fix one leaking school roof.

PROPOSITION 74 IS DECEPTIVE BECAUSE IT MISLEADS PEOPLE ABOUT HOW TEACHER EMPLOYMENT REALLY WORKS. California teachers are not guaranteed a job for life, which means they don't have tenure. All teachers receive after a two-year probationary period is the right to a hearing before they are dismissed.

VOTE NO ON PROPOSITION 74.

Existing state law already gives school districts the authority to dismiss teachers for unsatisfactory performance, unprofessional conduct, criminal acts, dishonesty, or other activities not appropriate to teaching—no matter how long a teacher has been on the job.

PROPOSITION 74 IS UNFAIR TO TEACHERS BECAUSE IT TAKES AWAY THEIR RIGHT TO A HEARING BEFORE THEY ARE FIRED. We give criminals the right to due process, and our teachers deserve those fundamental rights, as well.

Over the next 10 years, we will need 100,000 new teachers. Proposition 74 hurts our ability to recruit and retain quality teachers while doing absolutely nothing to improve either teacher performance or student

achievement. Proposition 74 hurts young teachers most. It will discourage young people from entering the teaching profession at this critical time.

THIS UNNECESSARY ANTI-TEACHER INITIATIVE WAS PUT ON THE BALLOT FOR ONLY ONE REASON—to punish teachers for speaking out against the governor's poor record on education and criticizing him for breaking his promise to fully fund our schools.

The governor says that Proposition 74 is needed. But university researchers say that they know of no evidence to support the claim that lengthening the teacher probation period improves teacher performance or student achievement. Good teaching comes from mentoring, training, and support—not from the kind of negative, punitive approach imposed by Proposition 74.

VOTE NO ON 74. Proposition 74 is designed to divert attention away from the governor's failure on education. California schools lost \$3.1 billion when he broke his much-publicized promise to repay the money he took from the state's education budget last year. Now he has a plan that budget experts and educators warn will cut educational funding by another \$4 billion.

Rather than punishing teachers, we should give them our thanks for making a huge difference in the lives of our children—and for speaking up for what California schools and the students need to be successful.

PLEASE JOIN US IN VOTING "NO" ON PROPOSITION 74.

**BARBARA KERR**, President

California Teachers Association

**JACK O'CONNELL**, State Superintendent of Public Instruction

**NAM NGUYEN**, Student Teacher

## Rebuttal to Argument Against Proposition 74

Don't be misled by opponents of 74. They don't want real education reform. Their solution is to *keep throwing billions of new tax dollars every year at a system that is rife with waste and bureaucratic regulations.*

We need to put more money into our classrooms, instead of wasting it on poor performing teachers, outrageous legal costs, and bureaucratic rules and regulations.

*Today, it's almost impossible to replace poor performing teachers who have what amounts to "guaranteed employment for life"—an antiquated system that wastes taxpayer money and ultimately hurts our children:*

*The Riverside Press Enterprise reported several years ago on a case where a teacher called her students derogatory names, swore at them, showed R-rated movies, and once even sent a 4th grade student to her car to retrieve a butcher knife. Was she fired? No! She was paid \$25,000 to quit.*

*Rather than pay hundreds of thousands of dollars to lawyers and conduct lengthy and useless dismissal proceedings, school districts are forced to actually pay teachers to resign because of outdated tenure laws.*

*Prop. 74 protects and rewards good teachers, but makes it possible to replace poor-performing teachers in a responsible and objective manner:*

- Requires teachers perform well on the job for five years instead of two before becoming eligible for tenure.
- Makes it possible and less expensive to remove a poor-performing teacher after two unsatisfactory evaluations.

*Vote "YES on 74"—Responsible reforms to improve our public schools.*

*[www.JoinArnold.com](http://www.JoinArnold.com)*

**DR. PETER G. MEHAS**, Superintendent  
Fresno County Office of Education

**HUGH MOONEY**, Teacher  
Galt Union High School District

**LILLIAN PERRY**, Teacher  
Fontana Unified School District

# TEXT OF PROPOSED LAWS (CONTINUED)

## PROPOSITION 74

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends sections of the Education Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

## PROPOSED LAW

### SECTION 1. Title

This measure shall be known as the “Put the Kids First Act.”

### SECTION 2. Findings and Declarations

(a) California children deserve the best teachers available.

(b) Teachers currently are granted permanent employment status after only two years on the job. Experts believe that a teacher’s ultimate potential and skill level cannot be fully assessed within just two years.

(c) Teacher assignments are based more on teacher seniority and tenure rules than on the needs of the students, depriving students of the best available educational experience.

(d) Once a teacher has permanent status:

(1) Union negotiated rules often require them to be assigned to positions by seniority rather than the needs of the students or best interests of a school.

(2) Teachers can usually be replaced, no matter how talented the replacement, only after a lengthy appeals process costing upwards of \$150,000.

(e) There is an immediate need to give greater flexibility in the assignment of teachers in order to provide students with the greatest educational opportunity.

### SECTION 3. Purpose and Intent

In enacting this measure, it is the intent of the people of the State of California to ensure that the needs of students will be given high priority in the assignment of teachers.

SECTION 4. Section 44929.21 of the Education Code is amended to read:

44929.21. (a) Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for three complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district.

This subdivision shall apply only to probationary employees whose probationary period commenced prior to the 1983–84 fiscal year.

(b) Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for two complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district.

The governing board shall notify the employee, on or before March 15 of the employee’s second complete consecutive school year of employment by the district in a position or positions requiring certification qualifications, of the decision to reelect or not reelect the employee for the next succeeding school year to the position. In the event that the governing board does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year.

This subdivision shall apply only to probationary employees whose probationary period commenced during the 1983–84 fiscal year or any fiscal year thereafter.

(c) *Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for five complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district. The governing board shall notify the employee, on or before March 15 of the employee’s fifth complete consecutive school year of employment by the*

*district in a position or positions requiring certification qualifications, of the decision to reelect or not reelect the employee for the next succeeding school year to the position. In the event that the governing board does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year.*

*This subdivision shall apply only to probationary employees whose probationary period commenced during the 2003–04 fiscal year or any fiscal year thereafter.*

SECTION 5. Section 44932 of the Education Code is amended to read:

44932. *Grounds for dismissal of permanent employee; Suspension of permanent probationary employee for unprofessional conduct.*

(a) No permanent employee shall be dismissed except for one or more of the following causes:

(1) Immoral or unprofessional conduct.

(2) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188 of the Statutes of 1919, or in any amendment thereof.

(3) Dishonesty.

(4) Unsatisfactory performance.

(5) Evident unfitness for service.

(6) Physical or mental condition unfitting him or her to instruct or associate with children.

(7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her.

(8) Conviction of a felony or of any crime involving moral turpitude.

(9) Violation of Section 51530 or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947.

(10) Knowing membership by the employee in the Communist Party.

(11) Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children.

(b) The governing board of a school district may suspend without pay for a specific period of time on grounds of unprofessional conduct a permanent certificated employee or, in a school district with an average daily attendance of less than 250 pupils, a probationary employee, pursuant to the procedures specified in Sections 44933, 44934, 44935, 44936, 44937, 44943, and 44944. This authorization shall not apply to any school district which has adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code.

(c) *The receipt by a permanent employee of two consecutive unsatisfactory evaluations conducted pursuant to Article 11 (commencing with Section 44660) of Chapter 3 shall constitute unsatisfactory performance as the term is used in this section, and the governing board of the school district may, in its discretion, and without regard for Sections 44934 and 44938, dismiss the employee by written notice on the basis of the employee’s evaluation reports. Within 30 days of receipt of the notice of dismissal, the employee may request an administrative hearing which shall be conducted pursuant to Section 44944.*

### SECTION 6. Conflicting Ballot Measures

In the event that this measure and another measure or measures relating to teacher tenure shall appear on the same statewide election ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measures shall be null and void.

### SECTION 7. Severability

If any provisions of this act, or part thereof, are for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions are severable.

### SECTION 8. Amendment

This measure may be amended to further its purposes by a bill passed by a two-thirds vote of the membership of both houses of the Legislature and signed by the Governor, provided that at least 14 days prior to passage in each house, copies of the bill in final form shall be made available by the clerk of each house to the public and the news media.